

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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LIVE FACE ON WEB, LLC,

Plaintiff,

v.

USANA HEALTH SCIENCES, INC.,

Defendant.

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Civil Action

No.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, Live Face on Web, LLC (“LFOW” or “Plaintiff”), by and through its undersigned counsel, brings the following Complaint against defendant, USANA Health Sciences, Inc. (“USANA” or “Defendant”), and avers as follows:

**NATURE OF THE ACTION**

1. This is an action for willful copyright infringement, willful trademark infringement, fraud, breach of contract, tortious interference with contractual and business relations, conversion, unjust enrichment and unfair competition.

2. As fully set forth herein, USANA misused, creating unauthorized derivative works from, and distributed without authorization the LFOW’s copyrighted and trademarked works and the unauthorized derivative works, and made intentionally false and misleading statements to LFOW and others with whom LFOW does business, thus causing substantial and irreversible damage to LFOW.

3. LFOW seeks, *inter alia*, an Order for impounding and destruction of the infringing articles, USANA’s profits attributable to its unlawful acts, counsel fees, compensatory and punitive damages and other relief available under applicable law.

**THE PARTIES**

4. Plaintiff, Live Face on Web, LLC, is a Pennsylvania limited liability company with its principal place of business at 1300 Industrial Boulevard, Suite 212, Southampton, PA 18966.

5. Defendant, USANA Health Sciences, Inc., upon information and belief, is a Utah corporation with its principal place of business at 3838 West Parkway Boulevard, Salt Lake City, UT 84120.

6. Upon information and belief, USANA owns, controls and/or operates the website at [www.usana.com](http://www.usana.com).

**JURISDICTION AND VENUE**

7. This action arising under the U.S. Copyright Act and the Lanham Trademark Act, and thus this Court has federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over all state law claims pursuant to 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over the Defendant. Defendant has conducted business in, and has had continuous and systematic contacts with the Commonwealth of Pennsylvania and this District. Defendant has purposefully availed itself of the privilege of doing business in Pennsylvania, and critical elements of Defendant's wrongdoing occurred in this Commonwealth. Defendant has also agreed contractually to jurisdiction and venue in this District under the EULA (as defined below).

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(a) in that a substantial part of the events or omissions giving rise to the claims herein occurred in this District, a substantial part of the property that is the subject of the action is situated in this

District, and Defendant has sufficient contacts with this District such that Defendant may be found here.

## **BACKGROUND**

### **I. LFOW's Business and Technology**

10. LFOW is a leading developer and owner of “live person” software (“LFOW Software”) and video technology for websites (collectively, the “LFOW Technology”), which it licenses to businesses and individuals.

11. The LFOW Technology allows a company to display a “walking” and “talking” personal host who introduces a website to an online visitor. The spokesperson can then be configured to explain a company’s products and/or services and to direct a visitor’s attention to a particular product or aspect of the website.

12. The LFOW Technology enables a company to customize and dynamically modify settings and functionality of the spokesperson. By way of example and not limitation, a customer utilizing the LFOW Technology can: (a) manipulate the positioning of the spokesperson on its website and select between a static, relative or dynamic positioning features; (b) adjust the delay between the time an online visitor enters the website and the start time of the spokesperson’s presentation; (c) select the number of times a presentation plays for each particular visitor; and (d) select “click on me” functionality that directs a user to a predetermined page or section of the website which promotes goods or services and/or reinforces the image and brand of the customer.

13. The LFOW Technology seeks to enhance a web site with a real live model, capture, hold and prolong the attention of the average online visitor and have a direct and indirect positive impact on sales and/or the brand, public image and reputation of any company

that has an online presence.

14. The LFOW Technology, the spokesperson's video presentation created by LFOW, and other components are licensed by LFOW to a customer in a "package" (each being a "LFOW Software Package") for a fee and subject to the terms and conditions of LFOW's End User License Agreement ("EULA").

15. Specifically, each LFOW Software Package consists of three parts: (a) the video presentation of the spokesperson, which is typically created and owned by LFOW and protectable under, *inter alia*, U.S. copyright laws; (b) the LFOW Software, comprised of LFOW JavaScript source code, which is also a copyrighted work, duly registered with the U.S. Copyright Office in accordance with law, and is owned by LFOW and on which LFOW has spent considerable time, effort and money to develop and market; and (c) the LFOW video player, which has LFOW trademark and/or copyright notices ("LFOW Video Player").

16. On January 13, 2009, LFOW duly registered the trademark "Live Face On Web", registration no. 77444118 ("Subject Mark"), which it has continuously used in commerce since registration, including, without limitation, by incorporating the same into the LFOW Software Packages.

17. On January 20, 2011, LFOW duly registered the copyright in the LFOW Software in the United States Copyright Office, as evidenced by the certificate of registration issued by the Register of Copyrights and attached herewith as **Exhibit "A"**.

**II. USANA Licenses LFOW's Product Only To Intentionally Removes LFOW's Copyright Notice and Create Unauthorized Derivative Works for Use Worldwide**

18. On or about February 21, 2013, USANA licensed a LFOW Software Package ("Subject LFOW Software Package"), which displayed a marketing and sales presentation in the

English language from USANA's CEO, David Wentz ("Subject LFOV Video Presentation").<sup>1</sup> A true and correct copy of the February 21, 2013 LFOV invoice for the licensed Subject LFOV Software Package is attached hereto as **Exhibit "B"**.<sup>2</sup>

19. In the Subject LFOV Video Presentation, USANA's CEO, *inter alia*, touts how great USANA and its products are, strongly encourages the end user to purchase and use the USANA products as well as participate in its sales partnership program in order to sell to third parties, and specifically points with his finger to the portion of the USANA website where the end user should go to facilitate these sales and related actions and transactions.

20. Thus, the Subject LFOV Software Package was a powerful sales and marketing tool for USANA to generate revenues and profits and, upon information and belief, the use and misuse of the Subject LFOV Software Package by USANA did in fact generate significant revenues and profits for USANA, as more fully described below.

21. The Subject LFOV Software Package was licensed as a whole and contained three parts as described above, i.e., the Subject LFOV Video Presentation, LFOV Software (including the JavaScript source code) and LFOV Video Player.

22. The Subject LFOV Software Package is governed by the terms of the LFOV End User License Agreement ("EULA"). A true and correct copy of the EULA is attached herewith as **Exhibit "C"**.

23. USANA accepted the Subject LFOV Software Package and agreed to be bound by the terms and conditions of the EULA. True and correct copies of emails dated February

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<sup>1</sup> While USANA provided the raw video file to LFOV for use in connection with the Subject LFOV Software Package, LFOV was required to improve, modify and integrate such modified video file in order to create the Subject LFOV Video Presentation that was incorporated into the Subject LFOV Software Package.

<sup>2</sup> The February 21, 2013 LFOV invoice evidenced the fact that USANA requested and paid an additional fee to LFOV to have LFOV's logo button removed from the LFOV Video Player console visible to website visitors.

2013 evidencing, *inter alia*, the delivery and acceptance of the Subject LFOW Software Package by USANA under the terms and conditions of the EULA are attached hereto as **Exhibit “D”**.

24. Article 1 of the EULA states, in relevant part, that:

Subject to YOUR agreement to, and compliance with, the terms and conditions set forth in this EULA, LFOW grants YOU a personal, temporary, non-exclusive, and non-transferable license to: **(a) install one (1) copy of the PRODUCT onto the hard drive of one (1) WEB SERVER, solely in machine-executable form; and (b) use the PRODUCT with one (1) WEB SITE; and (c) use the PRODUCT with one (1) WEB PAGE...**

See **Exhibit “C”**, EULA Article 1 (emphasis added).

25. Article 2(1) of the EULA states, in relevant part, that:

(a) YOU may not copy or reproduce any portion of the LICENSED MATERIALS ... (c) YOU may not change, alter, amend, modify or create derivative works, enhancements, extensions or add-ons to any of the LICENSED MATERIALS ... (d) YOU may not decompile, reverse engineer or disassemble any of the LICENSED MATERIALS, in whole or in part ... (e) YOU may not divide the PRODUCT or use any of the components of the PRODUCT individually or in combination with anything comprising less than the entire PRODUCT ... (g) YOU may not utilize the LICENSED MATERIALS separately ... (h) YOU may not remove the LFOW logo or any identifying materials contained on the PRODUCT or in the LICENSED MATERIALS ... (i) YOU will at all times comply with, and will not circumvent or attempt to circumvent, any of the restrictions on use set forth in this Article 2 or elsewhere in this EULA.

See **Exhibit “C”**, EULA Article 2(1).

26. Article 7 of the EULA states, in relevant part, that:

**COPYRIGHT.** All title and copyrights in and to the PRODUCT (including but not limited to any images, text, video incorporated into the PRODUCT), the accompanying electronic materials, and any copies of the PRODUCT are owned by LFOW, or its suppliers. The PRODUCT is protected by copyright laws and international treaty provisions. Therefore, YOU must treat the PRODUCT like any other copyrighted material.

See **Exhibit “C”**, EULA Article 7.

27. The Subject LFOW Software Package was licensed for use by USANA on *one (1) Web Server, Web Site and Web Page* in accordance with the terms and conditions of the EULA. See **Exhibit “C”**, EULA Article 1.

28. Therefore, USANA knew that:

- a. use of the Subject LFOW Software Package on any additional Web Servers, Web Sites or Web Pages beyond the *one (1) licensed* would require the purchase of additional licenses from LFOW; and
- b. USANA could not change, alter, amend, modify or create derivative works, enhancements, extensions or add-ons to the Subject LFOW Software Package without LFOW’s express written authorization; and
- c. USANA had no authorization to remove LFOW’s copyright notice from the Subject LFOW Software Package.

29. However, upon information and belief, USANA at all material times hereto planned to license only *one* version of the Subject LFOW Software Package in order to gain access to the LFOW Technology, and then surreptitiously create *numerous*, unlawful derivative works based on the licensed product to promote its worldwide marketing and sales activities, all to avoid paying to LFOW the applicable license fees therefor.

30. In its communications with LFOW prior to and after the licensing of the Subject LFOW Software Package, USANA mislead LFOW into believing that it was interested in only licensing an English version of the Subject LFOW Software Package.

31. However, once it received the Subject LFOW Software Package, USANA did not immediately deploy it in commerce as would a bona fide customer of LFOW.

32. Instead, upon information and belief, USANA began to unlawfully decompile and

modify the Subject LFOW Software Package, through its software developer employees who are familiar with applicable copyright, trademark and other legal rights, to intentionally, clandestinely and unlawfully:

- a. remove LFOW's copyright notices in violation of the EULA and applicable law; and
- b. created at least nine (9) unauthorized derivative works from the Subject LFOW Software Package in English, Spanish, French, Japanese, Korean and other languages without the required LFOW copyright notices (collectively, the "Infringing Packages").

33. USANA then intentionally, clandestinely and unlawfully used the Subject LFOW Software Package and/or the Infringing Packages on numerous unauthorized URLs or Web Pages for which USANA did not pay applicable fees to LFOW (collectively, the "Unauthorized USANA Web Pages").

34. Upon information and belief, the originally licensed version of the Subject LFOW Software Package played to end users (e.g., USANA customers, agents or website visitors) approximately **120 times** since it was delivered to USANA.

35. Comparatively, upon information and belief, the Infringing Packages played to end users (e.g., USANA customers, agents or website visitors) over **6,000 times**.

36. USANA's infringement was willful and outrageous.

37. For instance, in order to remove LFOW's copyright notice, USANA had to, *inter alia*, unlawfully modify the LFOW Video Presentation file incorporated into the Subject LFOW Software Package.

38. In order to create the Infringing Products, and in addition to the steps required to



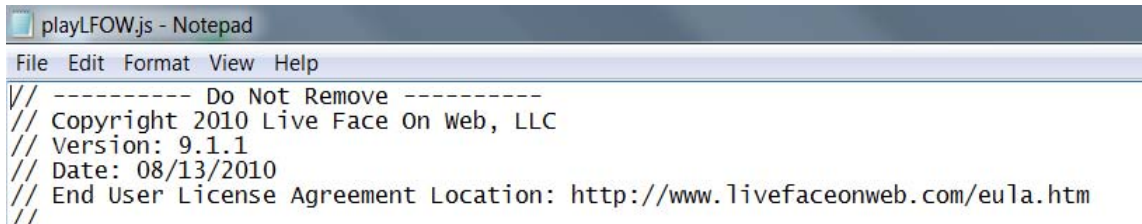
unlawfully removing LFOW's copyright notice, USANA would have had to (and, upon information and belief, did) modify the Subject LFOW Software Package by, *inter alia*: (i) changing LFOW's JavaScript source code in order to reference USANA's infringing derivative works, (ii) reducing the sound in the Subject LFOW Video Presentation incorporated into the Subject LFOW Software Package, (iii) overlaying and integrating various unauthorized voice files into the Subject LFOW Software Package, and (iv) recompile the components to create at least nine (9) Infringing Products.

39. Certain of USANA's infringing computer files were even named to include LFOW's proprietary "\_LF" naming convention and compressed to the identical sizes of LFOW's computer files in order to "trick" the LFOW Software into recognizing and playing the infringing files as though they were part of the original licensed work. The Infringing Products were then used throughout the world by USANA in a clear attempt to increase its sales and profits, all at the expense of LFOW's contractual and intellectual property rights.

40. In addition, the Subject LFOW Software Package was designed to notify and dissuade a would-be infringer seeking to alter the LFOW Software Package without authorization by displaying the LFOW copyright notice prominently on the bottom of the video presentation when the would-be infringer attempted to decompile the Subject LFOW Software Package in violation of the EULA and applicable law, and which USANA did see when perpetrating its unlawful acts. Attached hereto as **Exhibit "E"** is a true and correct copy of the image that a would-be infringer would see (and which USANA did see) when unlawfully decompiling the Subject LFOW Software Package to remove the LFOW Video Presentation embedded therein.

41. Moreover, every time USANA opened the LFOW Software JavaScript source

code file to unlawfully create its nine (9) Infringing Works, USANA would have read and scrolled through the first five (5) lines of the source code, containing LFOW's copyright notice and registered trademark, which read as follows:

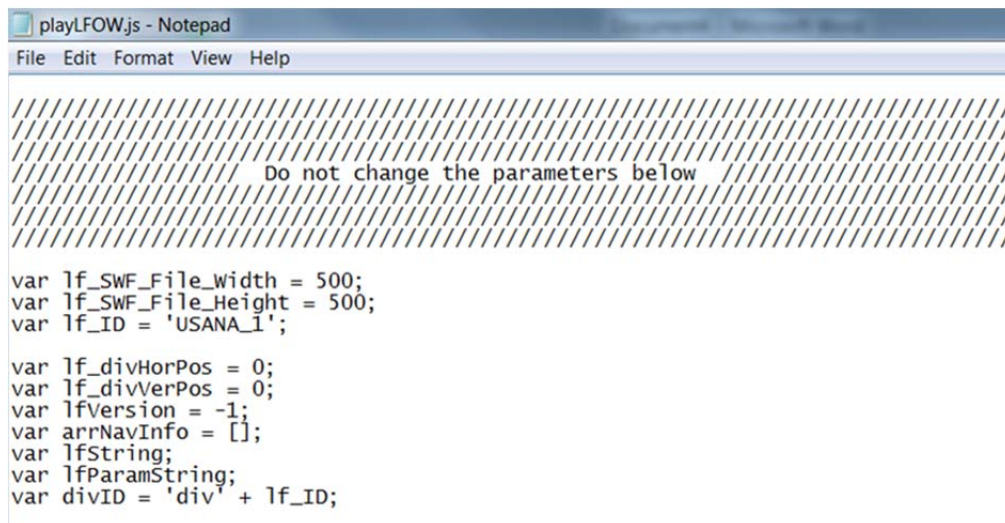


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// ----- Do Not Remove -----
// Copyright 2010 Live Face On Web, LLC
// Version: 9.1.1
// Date: 08/13/2010
// End User License Agreement Location: http://www.livefaceonweb.com/eula.htm
//

```

42. Further, in order to make the Infringing Products work in LFOW's Video Player, USANA had to modify the portion of the LFOW source code parameters which contained the following warning notice stating "Do not change the parameters below" just a few lines above:



```

////////////////////////////////////
////////////////////////////////////
//////////////////////////////////// Do not change the parameters below //////////////////////////////////////
////////////////////////////////////
////////////////////////////////////

var lf_SWF_File_width = 500;
var lf_SWF_File_Height = 500;
var lf_ID = 'USANA_1';

var lf_divHorPos = 0;
var lf_divVerPos = 0;
var lfVersion = -1;
var arrNavInfo = [];
var lfString;
var lfParamString;
var divID = 'div' + lf_ID;

```

43. The USANA software developers would have read and scrolled through these legal notices and warnings every time they opened the LFOW Software JavaScript file to create the Infringing Products -- at least nine (9) times and likely many, many more.

44. However, no law, legal notice or warning would prevent USANA from willfully infringing LFOW's rights.

45. The unlawful alteration, creation, reproduction and use of the Subject LFOW

Software Package and Infringing Products on the Unauthorized USANA Web Pages constitutes a breach of the EULA and intentional infringement of LFOW's intellectual property rights, including, without limitation, LFOW's registered copyright and trademark material.

46. As the owner of registered copyright and trademark material in the Subject LFOW Software Package, LFOW has an interest in protecting its rights against such intentional intellectual property infringement.

47. By letter dated August 16, 2013, LFOW demanded that USANA cease and desist from its unlawful conduct.<sup>3</sup> A true and correct copy of the aforementioned August 16, 2013 letter is attached hereto as **Exhibit "F"**.

48. However, USANA did not immediately comply, but admitted in an August 28, 2013 email that *"Yes, it's true that USANA's IT programmer working on this project was asked by USANA's production team to plug into the LFOW player several different (I believe 9 total) videos that had been translated into various foreign languages..."* A true and correct copy of the aforementioned August 28, 2013 email from USANA's Deputy General Counsel, Kevin McMurray, is attached hereto as **Exhibit "G"**.

**III. After Agreeing to Stop the Willful Infringement, USANA Lashes Out Against LFOW by Improperly Disputing Credit Card Charges as "Fraudulent", and then Discontinuing the Meritless Dispute After Damaging LFOW**

49. In August 2013, in accordance with the EULA and the LFOW credit card authorization form executed by USANA, LFOW billed USANA's credit card in the aggregate amount of \$8,400.00 for the unauthorized use of the Subject USANA Software Package on certain unlicensed Web Pages ("Additional LFOW Credit Card Charges"). A true and correct copy of the USANA credit card authorization form is attached hereto as **Exhibit "H"**.

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<sup>3</sup> In August 2013, LFOW believed the Infringing Products were displayed on approximately fifty-five (55) unauthorized URLs or Web Pages. However, LFOW has since discovered additional unauthorized URLs and Web Pages.

50. However, the Additional LFOW Credit Card Charges relate solely to USANA's misuse of the Subject USANA Software Package on Web Pages beyond the one (1) originally licensed and paid for by USANA, but do not relate to or purport to compensate LFOW for any damages resulting from USANA's other unlawful conduct -- namely, the creation and use of the Infringing Products on numerous unauthorized URLs or Web Pages, which has resulted in harm to LFOW for which it has not been compensated.

51. Article 1 of the EULA states, in relevant part, that:

LFOW has the capability of monitoring each installation of the PRODUCT and each WEB SITE and WEB PAGE on which it is used. ***YOU hereby authorize and permit such monitoring and acknowledge that in the event that YOUR installation and/or use of the PRODUCT is in excess of the installation or use permitted above, LFOW shall be permitted to, at the option of LFOW, deactivate the PRODUCT to the extent of such prohibited use, or automatically charge YOU for any use in excess of the permitted use described above at LFOW's then current fees. Such additional charges shall be deemed to automatically be approved by YOU and YOU shall be responsible for all such additional charges, which charges may automatically be billed to YOUR credit card.***

See **Exhibit "C"**, EULA Article 1 (emphasis added).

52. Article 5 of the EULA states, in relevant part, that:

LFOW will charge the ***fees and any other applicable additional fees to the charge or credit card account provided by YOU.*** By providing credit card information, ***YOU are authorizing LFOW to automatically continue charging that card... for all fees or charges associated with YOUR subscription including any renewal fees as described below.*** YOU authorize the card issuer to pay any amounts described herein and authorize LFOW, or any other company that acts as a billing agent for LFOW, to continue to attempt to charge all sums described herein to YOUR credit card account until such amounts are paid in full. YOU agree to provide LFOW updated information on YOUR credit card upon LFOW's request and any time the information earlier provided is no longer valid. If payment is not received by LFOW from YOUR credit card issuer or its agents, YOU agree to pay all amounts due upon demand by LFOW.

See **Exhibit “C”**, EULA Article 5 (emphasis added).

53. In an email dated September 19, 2013, USANA admitted that the Additional LFOW Credit Card Charges were “*authorized*” under the EULA. A true and correct copy of the aforementioned email dated September 19, 2013 from USANA’s Deputy General Counsel, Kevin McMurray, is attached hereto as **Exhibit “T”**.

54. However, despite acknowledging and agreeing to the Additional LFOW Credit Card Charges in accordance with the EULA and LFOW’s credit card authorization form, and in the midst of pre-litigation discussions, USANA surreptitiously disputed the Additional LFOW Credit Card Charges with its credit card company on the knowingly false basis that such charges were “fraudulently” made to its credit card by LFOW.

55. Upon information and belief, USANA made knowingly false and misleading statements to its credit card company in order to intentionally harm the contract and business relationship between LFOW and its merchant credit card processing company, on which LFOW’s business depends heavily.

56. Upon information and belief, USANA knew that accusing LFOW of fraudulently billing its credit card would cause LFOW’s merchant credit card processing company to terminate the parties’ business relationship or to impose burdensome terms and conditions (such as additional fees, additional reserves and additional holding periods before disbursing funds to LFOW) on LFOW’s credit card processing activities, which would have an adverse impact on LFOW’s business.

57. To date, LFOW is unable to determine the full extent of the harm caused by USANA to LFOW and its business, contracts and relations.

58. USANA’s conduct is fraudulent, outrageous, intentional, malicious, willful,

wanton and deliberately intended to cause reputational and pecuniary harm or loss to LFOW, thereby entitling LFOW to an award of punitive damages.

59. As a result of foregoing conduct of USANA, LFOW has suffered significant harm and loss.

**COUNT I**  
**COPYRIGHT INFRINGEMENT**

60. Plaintiff incorporates by reference the averments contained in the preceding paragraphs above, as if set forth fully herein.

61. The aforesaid conduct of the Defendant constitutes copyright infringement under, *inter alia*, 17 U.S.C. § 501 and 17 U.S.C. § 506.

62. The items specified herein are copyrightable subject matter under the laws of the United States.

63. Plaintiff has complied in all respects with the provisions of the Copyright Act, 17 U.S.C. §§ 101 et seq., and all other laws governing copyright to secure the exclusive rights and privileges in and to the copyrights of the items identified herein.

64. The use and distribution of the Infringing Products, and removal of LFOW's copyright notices, exposes Plaintiff to serious harm and diminishes the value of the rights exclusively owned by Plaintiff.

65. Unless Defendant is restrained and enjoined from its unauthorized use and distribution of the Infringing Products and the LFOW Software Package, these injuries will continue to occur.

66. Irreparable harm and injury to Plaintiff are imminent as a result of Defendant's conduct and Plaintiff is without an adequate remedy at law.

67. Pursuant to 17 U.S.C. § 502(a), Plaintiff is entitled to an injunction restraining

Defendant, its employees and agents, and all other persons acting in concert with them, from engaging in any further improper acts.

68. Pursuant to 17 U.S.C. §§ 503(a) and 503(b), Plaintiff is entitled to an order impounding the infringing articles and the means by which such infringing articles were produced or reproduced.

69. Pursuant to 17 U.S.C. § 504, Plaintiff is also entitled to recover statutory damages of \$150,000 for each work infringed.

70. Pursuant to 17 U.S.C. § 505, Plaintiff is entitled to an award of attorneys' fees and costs.

71. Pursuant to 17 U.S.C. § 506, Plaintiff is entitled to recover statutory damages of \$2,500 per each fraudulently removed copyright notice by Defendant.

**COUNT II**  
**VIOLATION OF THE LANHAM ACT**

72. Plaintiff incorporates by reference the averments contained in the preceding paragraphs above, as if set forth fully herein.

73. LFOW has continuously used the Subject Mark in interstate commerce in connection with its goods and services, and incorporates the Subject Mark in its LFOW Software Packages, including, without limitation, the Subject LFOW Software Package.

74. The Subject Mark is a valuable source for indicating the source and origin of LFOW's goods and for anti-counterfeiting purposes, as more fully described above.

75. The removal of LFOW's copyright notices which also contained the Subject Mark, and the misuse of the Subject Mark in respect to creation, modification, distribution and promotion of the Subject LFOW Software Package and the Infringing Packages, as more fully described herein, constitutes willful trademark infringement, trademark dilution, false

designation of origin and false description and representation in commerce and otherwise violates the Lanham Act, 15 U.S.C. § 1051 et seq.

**COUNT III**  
**FRAUD**

76. Plaintiff incorporates by reference the averments contained in the preceding paragraphs above, as if set forth fully herein.

77. In furtherance of its fraudulent scheme as more fully set forth above, the Defendant made numerous misrepresentations and omissions to Plaintiff and others.

78. Plaintiff believes and therefore avers that the aforesaid misrepresentations and omissions were material, false and knowingly and intentionally made by the Defendant.

79. Plaintiffs believe and therefore aver that, at the time of the misrepresentations and omissions, the Defendant knew, or recklessly disregarded the fact, that these misrepresentations and omissions would mislead the Plaintiff and others, and that the Plaintiff and others would act in reliance upon them.

80. Plaintiff and others reasonably relied upon these material misrepresentations and omissions.

81. As a direct and proximate result of such material misrepresentations and reliance thereon, the Plaintiff has been damaged.

82. The conduct of the Defendant, which induced the detrimental reliance thereon by Plaintiff and others, was fraudulent, malicious and reckless, thereby entitling Plaintiff to punitive damages.

**COUNT IV**  
**BREACH OF CONTRACT**

83. Plaintiff incorporates by reference the averments contained in the preceding



paragraphs above, as if set forth fully herein.

84. The actions of Defendant violate the terms and conditions of the EULA.

85. By reason of the aforesaid breach, Plaintiff has been harmed as heretofore alleged.

**COUNT V**  
**TORTIOUS INTERFERENCE WITH CONTRACTS AND BUSINESS RELATIONS**

86. Plaintiff incorporates by reference the averments contained in the preceding paragraphs above, as if set forth fully herein.

87. Plaintiff has valid and continuing present contract and business relationship with its merchant credit card processing service provider.

88. Defendant knew of the existence of this contract and business relationship.

89. Despite this knowledge, Defendant directly and/or indirectly made false and misleading statements to its credit card company, LFLOW's merchant credit card processing service provider and others, including, without limitation, that Plaintiff "fraudulently" billed the Additional LFLOW Credit Card Changes when such were expressly authorized under the EULA and the LFLOW credit card authorization form which USANA executed, in order to harm Plaintiff's contracts or business relations or otherwise injure the Plaintiff.

90. Defendant's actions were fraudulent and without privilege or justification.

91. Upon information and belief, as a result of Defendant's conduct, Plaintiff's reputation, contract, business relationship and valuation have been reduced or diminished.

92. The foregoing conduct by Defendant constitutes tortious interference with Plaintiff's contract and business relations.

**COUNT VI**  
**UNJUST ENRICHMENT**

93. Plaintiff incorporates by reference the averments contained in the preceding

paragraphs above, as if set forth fully herein.

94. Defendant has received or will receive unjust enrichment from its misappropriation and unauthorized use of Subject LFOW Software Package and the Infringing Products, in whole or in part.

95. Accordingly, any such enrichment is unjust and should, in equity and good conscience, be returned to Plaintiff.

**COUNT VII**  
**CONVERSION**

96. Plaintiff incorporates by reference the averments contained in the preceding paragraphs above, as if set forth fully herein.

97. By reason of the aforesaid, Defendant has unlawfully and willfully converted and misappropriated Plaintiff's valuable property for Defendant's benefit and to the great harm and detriment to the Plaintiff.

**COUNT VIII**  
**UNFAIR COMPETITION**

98. Plaintiff incorporates by reference the averments contained in the preceding paragraphs above, as if set forth fully herein.

99. The foregoing conduct of Defendant constitutes an unfair method of competition under both Pennsylvania common law and Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) et seq.

100. As a consequence of the foregoing, Plaintiff has suffered and will continue to suffer irreparable harm and loss, and has sustained damages including, without limitation, loss of valuable business, loss of profits and future profits, and loss of good will, in an amount to be

determined at trial, which damages are ongoing and continue unabated at the time of filing of this Complaint.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Live Face On Web, LLC, demands judgment in its favor and against Defendant, USANA Health Sciences, Inc., as follows:

A. A judgment that Defendant has engaged in willful copyright and trademark infringement; and

B. Under the authority of 17 U.S.C. § 502, that Defendant and its agents, employees, successors, assigns and all those controlled by them, or in active concert or participation with them, be preliminarily and permanently enjoined from:

1. Using, misusing, altering, modifying, creating derivative works from, displaying and distributing the LFOW Software Package and/or the Infringing Products; and

2. Committing further acts of copyright and trademark infringement; and

C. Under the authority of 17 U.S.C. § 503(a), an Order directing Defendant to shut down the website (or portions thereof) known as [www.usana.com](http://www.usana.com) or any other affiliated websites (or portions thereof) through which the unlawful activities were carried out; and

D. Under the authority of 17 U.S.C. § 504, an Order requiring Defendant to account to Plaintiff for, and to disgorge in favor of Plaintiff, the profits of Defendant from its infringement of Plaintiff's rights; and

E. Under the authority of 17 U.S.C. § 504, an award of statutory damages of \$150,000 in respect to each act of willful copyright infringement; and

F. Under the authority of 17 U.S.C. § 505, an Order allowing the recovery by Plaintiff of the full costs of this action, including Plaintiff's reasonable attorneys' fees; and

G. Under the authority of 17 U.S.C. § 506, an award of statutory damages of \$2,500 per each copyright notice removed; and

H. Under the authority of 15 U.S.C. §§ 1117(a) and 1125, an award of Defendant's profits, any damages sustained by Plaintiff and costs and attorney's fees as a result of the aforementioned unlawful conduct of Defendant; and

I. Award of damages for fraud, breach of contract, tortious interference, unjust enrichment, conversion and unfair competition in an amount to be determined at the time of trial, which is anticipated to be in excess of \$75,000; and

J. That a judgment be entered for Plaintiff against Defendant for punitive damages in excess of \$1,000,000 in view of the willfulness and egregious nature of Defendant's misconduct as against Plaintiff; and

K. That Defendant be ordered to pay to Plaintiff interest and costs incurred in maintaining this action; and

L. Award such other relief that the Court deems equitable, just and appropriate under the circumstances.

**JURY DEMAND**

Plaintiff respectfully demands a trial by jury on all issues so triable.

Respectfully Submitted,

TINOVSKY LAW FIRM

By: 

Vladislav Tinovsky, Esquire  
PA Bar No. 85671  
5 Neshaminy Interplex  
Suite 205  
Trevose, PA 19053  
215-568-6860

*Counsel for Plaintiff Live Face On Web, LLC*

Dated: October 23, 2013

## EXHIBIT “A”

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Acting Register of Copyrights, United States of America

**Registration Number**  
**TX 7-367-218**

**Effective date of  
registration:**

January 20, 2011

## Title

**Title of Work:** Live Face On Web, LLC -- Javascript Version 9.1.1

## Completion/Publication

**Year of Completion:** 2010

**Date of 1st Publication:** December 22, 2010

**Nation of 1st Publication:** United States

## Author

■ **Author:** Live Face On Web, LLC

**Author Created:** computer program

**Work made for hire:** Yes

**Citizen of:** United States

**Domiciled in:** United States

## Copyright claimant

**Copyright Claimant:** Live Face On Web, LLC

1300 Industrial Blvd., Ste. 212, Southampton, PA, 18966, United States

## Limitation of copyright claim

**Material excluded from this claim:** computer program

**New material included in claim:** computer program

## Rights and Permissions

**Organization Name:** Live Face On Web, LLC

**Name:** Yury Getsky

**Email:** yury@livefaceonweb.com

**Telephone:** 215-355-3501

**Address:** 1300 Industrial Blvd

Ste. 212

Southampton, PA 18966 United States

## Certification



**Name:** Yury Getsky

**Date:** January 20, 2011

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**Correspondence:** Yes



00001X00073672180201

## EXHIBIT “B”





LiveFaceOnWeb.com  
1300 Industrial Blvd. Suite 212  
Southampton, PA 18966  
Tel. 1.800.353.1990

# Invoice

Date	Invoice#
02/21/2013	200004221

**Bill To:**

Attn: Richard E Wilson  
USANA Health Sciences  
3838 W Parkway Blvd  
Salt Lake City, UT 84120  
Phone: +1-801-954-7100  
Email: Rick.wilson@us.usana.com

		P.O. No.	Terms	Project
				USANA
Quantity	Description		Rate	Amount
1	Video conversion of client provided footage.		\$900.00	\$900.00
1	Unbranded video player version.		\$150.00	\$150.00
Subtotal:				\$1,050.00 USD
Total:				\$1,050.00 USD

## EXHIBIT “C”

## END-USER LICENSE AGREEMENT

This End-User License Agreement ("**EULA**") is a legal agreement between **YOU** and Live Face On Web, LLC ("**LFOW**"). After reading this **EULA** and/or clicking on the "AGREE" checkbox on the Order Page **YOU** will indicate **YOUR** acceptance of these terms and conditions, at which point this **EULA** will become a legally binding agreement between **YOU** and **LFOW**. **YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR OTHERWISE USING THE PRODUCT. IF YOU DO NOT AGREE, DO NOT INSTALL, COPY, OR USE THE PRODUCT.**

### Definitions.

**YOU:** means an individual or a legal entity exercising rights under, and complying with all of the terms of, this **EULA** or a future version of this **EULA**. For legal entities, "**YOU**" includes any entity which controls, is controlled by, or is under common control with **YOU**. For purposes of this definition, "control" means the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise.

**WEB SERVER:** A computer connected to the Internet that stores and distributes **WEB PAGES** upon request.

**WEB SITE:** A collection of **WEB PAGES** or files on the World Wide Web that are linked together under a common address (**URL** or **IP Address**) and maintained by a company, organization, or individual.

**URL:** Uniform Resource Locator. This is the equivalent of **YOUR** home address on the internet. An example is <http://livefaceonweb.com/definitions/Glossary/> or [http:// 192.168.0.0/Samples](http://192.168.0.0/Samples).

**IP Address:** Internet Protocol Address. This is a unique string of numbers that identifies a computer or server on the Internet. These numbers are normally shown in groups separated by periods. Example: 192.168.0.0.

**WEB PAGE:** Any computer file, document, or grouping of electronic text which can be addressed by a hypertext link and rendered for a user on his/her computer monitor. This includes any grouping of electronic text, graphical material, or data generated by a software application and displayed through the use of a Web browser.

**PRODUCT:** set of computer files protected by the copyright laws of the United States and all applicable international copyright treaties of:

- (a) Compressed and uncompressed video recording with sound;
- (b) Media format based on **YOUR** selection within the **LFOW** ORDER PAGE;
- (c) Media Player based on Macromedia® technology;
- (d) Video Compressed Files based on Macromedia® technology; and
- (e) JavaScript File also known as ECMAScript.

### Copyright and Trademark Information

COPYRIGHT NOTICE: Copyright © 2006 Live Face on Web, LLC. All rights reserved.

**TRADEMARKS:** Trademarks referenced herein are either registered trademarks or trademarks of **LFOW** in the U.S. and/or other countries. The names of actual companies and **PRODUCT** mentioned herein and/or third-party trademarks, trade names and logos contained herein may be the trademarks of their respective owners.

The example companies, organizations, **PRODUCT**, domain names, email addresses, logos, people and events depicted herein are fictitious. No association with any real company, organization, **PRODUCT**, domain name, e-mail address, logo, person, or event is intended or should be inferred.

Any rights not expressly granted herein are reserved.

### Article 1. GRANT OF LICENSE

1. Subject to **YOUR** agreement to, and compliance with, the terms and conditions set forth in this **EULA**, **LFOW** grants **YOU** a personal, temporary, non-exclusive, and non-transferable license to:

- (a) install one (1) copy of the **PRODUCT** onto the hard drive of one (1) **WEB SERVER**, solely in machine-executable form; and
- (b) use the **PRODUCT** with one (1) **WEB SITE** ; and
- (c) use the **PRODUCT** with one (1) **WEB PAGE**;

in each instance, solely for advertisement purposes and not for any other purpose (including, without limitation, any act of electronic or physical distribution, performance or broadcast) and in accordance with the terms and conditions set forth in this **EULA**.

**LFOW** has the capability of monitoring each installation of the **PRODUCT** and each **WEB SITE** and **WEB PAGE** on which it is used. **YOU** hereby authorize and permit such monitoring and acknowledge that in the event that **YOUR** installation and/or use of the **PRODUCT** is in excess of the installation or use permitted above, **LFOW** shall be permitted to, at the option of **LFOW**, deactivate the **PRODUCT** to the extent of such prohibited use, or automatically charge **YOU** for any use in excess of the permitted use described above at **LFOW**'s then current fees. Such additional charges shall be deemed to automatically be approved by **YOU** and **YOU** shall be responsible for all such additional charges, which charges may automatically be billed to **YOUR** credit card.

**YOU** agree that this **EULA** does not provide **YOU** any right to grant sublicenses, transfers, copies, duplications of this **PRODUCT**.

2. The **PRODUCT** transferred electronically to **YOU** or contained on CD/DVD is sometimes referred to herein, collectively, as the "**LICENSED MATERIALS**".

3. PLEASE NOTE: **YOUR** use of the **PRODUCT** and the other **LICENSED MATERIALS** may be subject to additional restrictions, under applicable copyright and other laws that are not enforced or prescribed by any technology transferred to **YOU** electronically or contained on CD/DVD. The absence of any such technology designed to enforce these additional restrictions should in no way be viewed or interpreted as a waiver, on the part of **LFOW** or any other person or entity owning any rights in any of the **LICENSED MATERIALS**, of their respective rights to enforce any such additional restrictions regarding **YOUR** use of the **LICENSED MATERIALS**. **YOUR** use of the **PRODUCT** and the other **LICENSED MATERIALS** shall, at all times, remain subject to any and all applicable laws governing the use of such materials, including, without limitation, any restrictions on **YOUR** use prescribed therein.

4. All of **YOUR** rights to use the **PRODUCT**, as described herein, shall be subject to **YOUR** continued ownership of all rights in and to the electronically transferred content and/or physical CD/DVD on which such **PRODUCT** is embodied; should **YOU** transfer **YOUR** ownership rights in the electronically transferred content and/or physical CD/DVD on which such **LICENSED MATERIALS** is embodied (in whole or in part) to any other person, party, or company (whether by sale, gift or otherwise), **YOUR** rights in both the electronically transferred content and/or physical CD/DVD and such **PRODUCT** shall terminate.

#### **Article 2. RESTRICTIONS ON USE OF LICENSED MATERIALS**

1. Except to the extent otherwise expressly permitted hereunder or otherwise by the owner of the relevant rights in or to the **LICENSED MATERIALS** concerned, and without limitation, the following restrictions shall apply to **YOUR** use of the **LICENSED MATERIALS**:

- (a) **YOU** may not copy or reproduce any portion of the **LICENSED MATERIALS**;
  - (b) **YOU** may not distribute, share through any information network, transfer, convey, sell, and lease or rent any of the **LICENSED MATERIALS** to any other person or company, in whole or in part;
  - (c) **YOU** may not change, alter, amend, modify or create derivative works, enhancements, extensions or add-ons to any of the **LICENSED MATERIALS**;
  - (d) **YOU** may not decompile, reverse engineer or disassemble any of the **LICENSED MATERIALS**, in whole or in part;
  - (e) **YOU** may not divide the **PRODUCT** or use any of the components of the **PRODUCT** individually or in combination with anything comprising less than the entire **PRODUCT**;
  - (f) **YOU** may not export the **LICENSED MATERIALS** outside of the country where **YOU** reside. (This clause 1(f) of Article 2 shall not be applicable within the European Economic Area (EEA).);
  - (g) **YOU** may not utilize the **LICENSED MATERIALS** separately;
  - (h) **YOU** may not remove the **LFOW** logo or any identifying materials contained on the **PRODUCT** or in the **LICENSED MATERIALS**;
  - (i) **YOU** will at all times comply with, and will not circumvent or attempt to circumvent, any of the restrictions on use set forth in this Article 2 or elsewhere in this **EULA**.
2. In the event that the owner of the **LICENSED MATERIALS** is a party other than **LFOW** (each, a "**LICENSOR**"), **YOU** agree that such **LICENSOR** shall be a third party beneficiary under this **EULA** and, as such, shall have the right to enforce the terms and conditions of this **EULA** that pertain directly to such **LICENSOR'S** rights in and to the **LICENSED MATERIALS** concerned as if such **LICENSOR** was a party to this **EULA**. The rights granted to a **LICENSOR** under this Article shall not be revoked.

#### **Article 3. UPGRADES**

If **YOU** receive copy of the **PRODUCT** as an upgrade from an earlier version of the **PRODUCT**, it is provided to **YOU** on a license exchange basis. **YOU** agree by **YOUR** installation and use of such copy of the **PRODUCT** to voluntarily terminate **YOUR** earlier **EULA** and that **YOU** will not continue to use the earlier version of the **PRODUCT** or transfer it to another person or entity.

#### **Article 4. HOW WE MAY MODIFY THIS EULA**

**LFOW**, reserves the right, at any time and from time to time, to update, revise, amend, supplement, and otherwise modify this **EULA** and to impose new or additional rules, policies, terms, or conditions on **YOUR** use of the **PRODUCT**. **YOU** must review this **EULA** on regular basis. **YOU** can find the most recent version of the contract at <http://www.livefaceonweb.com/eula.htm>. The changed **EULA** becomes effective as soon as its amended or modified version is available at <http://www.livefaceonweb.com/eula.htm>. If **YOU** do not agree to the changes in the amended and/or modified **EULA**, then **YOU** must stop using the electronically transferred content and/or physical CD/DVD. If **YOU** do not stop using the electronically transferred content and/or physical CD/DVD, then **YOUR** use of the electronically transferred content and/or physical CD/DVD will continue under the amended and/or modified contract.

**YOU** agree to pay all fees and charges specified for the **PRODUCT** and the **LICENSED MATERIALS**. All fees are exclusive of applicable taxes (e.g. sales, use, or value-added tax), unless otherwise stated, and **YOU** are solely responsible for the payment of any such taxes that may be imposed on **YOUR** use of the **PRODUCT** and the **LICENSED MATERIALS**. **LFOW** may at any time change the price of the **PRODUCT** and the **LICENSED MATERIALS** or any part thereof, or institute new charges or fees. Price changes and institution of new charges implemented will apply after the effective date of the change. **YOUR** continued use of the **PRODUCT** and the **LICENSED MATERIALS** after the effective date of any such change shall constitute **YOUR** acceptance of such change. If **YOU** do not agree to such price changes, then **YOU** must cancel **YOUR** account and stop using the **PRODUCT** and the **LICENSED MATERIALS** and stop using the electronically transferred content and/or physical CD/DVD. If **YOU** do not cancel **YOUR** account and stop using the **PRODUCT** and the **LICENSED MATERIALS** and stop using the electronically transferred content and/or physical CD/DVD, then **YOUR** use of the electronically transferred content and/or physical CD/DVD will continue under the amended and/or modified contract.

#### **Article 5. PAYMENT METHOD**

**LFOW** will charge the fees and any other applicable additional fees to the charge or credit card account provided by **YOU**. By providing credit card information, **YOU** are authorizing **LFOW** to automatically continue charging that card (or any replacement card if the original card is renewed, lost, stolen, or changed for any reason by the card issuer, and the issuer informs **LFOW** of the new replacement card account) for all fees or charges associated with **YOUR** subscription including any renewal fees as described below. **YOU** authorize the card issuer to pay any amounts described herein and authorize **LFOW**, or any other company that acts as a billing agent for **LFOW**, to continue to attempt to charge all sums described herein to **YOUR** credit card account until such amounts are paid in full. **YOU** agree to provide **LFOW** updated information on **YOUR** credit card upon **LFOW's** request and any time the information earlier provided is no longer valid. If payment is not received by **LFOW** from **YOUR** credit card issuer or its agents, **YOU** agree to pay all amounts due upon demand by **LFOW**.

#### **Article 6. MISCELLANEOUS**

If **YOU** acquired this **PRODUCT** in the United States, this **EULA** is governed by the laws of the Commonwealth of Pennsylvania.

If this **PRODUCT** was acquired outside the United States, then local laws may apply.

(a) **RESERVATION OF RIGHTS AND OWNERSHIP.** The **PRODUCT** is licensed as a single **PRODUCT**. Its component parts may not be separated, or divided for use by more than one user. **LFOW** reserves all rights not expressly granted to **YOU** in this **EULA**. The **PRODUCT** is licensed, not sold to **YOU**. The **PRODUCT** is protected by copyright and other intellectual property laws and treaties. **LFOW** owns a license or the title, copyright, and other intellectual property rights in the **PRODUCT**.

(b) **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.** **YOU** may not reverse engineer, decompile, or disassemble the **PRODUCT**, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

(c) **NO RENTAL/COMMERCIAL HOSTING.** **YOU** may not rent, lease, lend or provide commercial hosting services with the **PRODUCT**.

(d) **NO SOFTWARE PRODUCT TRANSFER.** **YOU** may not assign or otherwise transfer, sell, convey, donate, or will the **PRODUCT** or any of **YOUR** rights hereunder to any third party.

(e) **RESTRICTIONS ON ALTERATION.** **YOU** may not rename, edit or create any derivative works from the **PRODUCT**.

**COPYRIGHT.** All title and copyrights in and to the **PRODUCT** (including but not limited to any images, text, video incorporated into the **PRODUCT**), the accompanying electronic materials, and any copies of the **PRODUCT** are owned by **LFOW**, or its suppliers. The **PRODUCT** is protected by copyright laws and international treaty provisions. Therefore, **YOU** must treat the **PRODUCT** like any other copyrighted material.

**TERMINATION.** Without prejudice to any other rights, **LFOW** may terminate this **EULA** if **YOU** fail to comply with the terms and conditions of this **EULA**. In such event, **YOU** must destroy all copies of the **PRODUCT** and all of its component parts.

#### **Article 7. INTELLECTUAL PROPERTY RIGHTS**

**YOU** will not use the **PRODUCT** to violate anyone's copyright, trademark, intellectual property rights, or privacy rights.

By submitting the text material(s) to be used in connection with the **PRODUCT** and/or the **LICENSED MATERIALS**, **YOU** are representing the following:

a) that the text material(s) are not copyrighted or plagiarized, and thereby can be used without any liability or claim(s) for copyright infringement or plagiarism, and **YOU** hereby relinquish all right(s) to the text material(s) to **LFOW** and hereby transfer and assign all rights in the text material(s) to **LFOW**; or

b) if the text materials are copyrighted, that **YOU** are a true and correct owner of the copyrighted text material(s), and thereby **YOU** grant to **LFOW**, the nonexclusive right(s) to create a derivative **PRODUCT** based on the text material(s). Any such Derivative **PRODUCT** shall be owned by **LFOW** and you hereby transfer and assign all rights in the Derivative **PRODUCT** and its components to **LFOW**. Further, **YOU** grant **LFOW** a worldwide, royalty-free, non-exclusive license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display the text material(s).

All title to, and intellectual property rights in, the **LICENSED MATERIALS** and any related documents are and shall remain owned and/or controlled solely and exclusively by **LFOW**, and/or its **LICENSORS**. **LFOW**, and/or all respective **LICENSORS** reserve all rights in the **LICENSED MATERIALS** not specifically granted to **YOU** under this **EULA**.

Livefaceonweb.com, is dully registered and owned by **LFOW**, its owners, partners, associates, suppliers, and subsidiaries.

#### **Article 8. EXCLUSION OF WARRANTIES**

**YOU** EXPRESSLY ACKNOWLEDGE AND AGREE THAT **YOU** ARE INSTALLING AND USING THE **LICENSED MATERIALS** AT **YOUR** OWN SOLE RISK. THE **LICENSED MATERIALS** ARE PROVIDED "AS IS" AND WITHOUT WARRANTY, TERM OR CONDITION OF ANY KIND, AND **LFOW**, ITS **LICENSORS** AND EACH OF THEIR LICENSEES, AFFILIATES AND AUTHORIZED REPRESENTATIVES (EACH, A "**LFOW PARTY**") EXPRESSLY DISCLAIM ALL WARRANTIES, TERMS OR CONDITIONS. EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A GENERAL OR PARTICULAR PURPOSE. NO ORAL, WRITTEN OR ELECTRONIC INFORMATION OR ADVICE GIVEN BY ANY **LFOW PARTY** SHALL CREATE ANY WARRANTY, TERM OR CONDITION WITH RESPECT TO THE **LICENSED MATERIALS** OR OTHERWISE. **LFOW** DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE **PRODUCT** AND THE **LICENSED MATERIALS** WILL MEET **YOUR** REQUIREMENTS OR THAT THE OPERATION OF THE **PRODUCT** AND THE **LICENSED MATERIALS** AND/OR ITS OR THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE **PRODUCT** AND THE **LICENSED MATERIALS**, IF ANY, WILL BE CORRECTED. SHOULD THE **LICENSED MATERIALS** PROVE TO BE DEFECTIVE, **YOU** (AND NOT **LFOW**) AGREE TO ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIRS OR CORRECTIONS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, TERMS OR CONDITIONS IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO **YOU**. THIS ARTICLE WILL APPLY ONLY WHEN AND

TO THE EXTENT THAT THE APPLICABLE LAW SPECIFICALLY MANDATES LIABILITY, DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

**Article 9. LIMITATION OF LIABILITY**

IN NO EVENT SHALL **LFOW**, OR ITS SUPPLIERS, ASSOCIATES, OR SUBSIDIARIES SHALL BE LIABLE FOR ANY LOSS OR DAMAGE(S), PERFORMANCE, OR NONE PERFORMANCE, EITHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, ARISING OUT OF THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, TERM OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY MISREPRESENTATION, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR ANY OTHER LEGAL THEORY ARISING OUT OF, OR RELATED TO, THIS **EULA** OR **YOUR** USE OF ANY OF THE **LICENSED MATERIALS** (SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE **PRODUCT** OR ANY ASSOCIATED EQUIPMENT, DOWNTIME AND USER'S TIME), EVEN IF THE **LFOW**, PARTY CONCERNED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO **YOU**. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES. In no event shall **LFOW**, or its suppliers be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this **PRODUCT**, even if **LFOW** has been advised of the possibility of such damages. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to **YOU**.

Notwithstanding any damages that **YOU** might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of **LFOW** and any of its suppliers under any provision of this **EULA** and **YOUR** exclusive remedy hereunder shall be limited to the lesser of the actual damages **YOU** incur in reasonable reliance on the **PRODUCT** or **LICENSED MATERIALS** or fifty percent (50%) of the amount actually paid by **YOU** for the **PRODUCT** for the six (6) months immediately prior to the claim for damages. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

**Article 10. DAMAGES ARISING OUT OF YOUR ACTIONS**

**YOU** shall defend, indemnify and hold the **LFOW**, its PARTIES, ASSOCIATES, SUPPLIERS, AND SUBSIDIARIES harmless from and against any and all liabilities, damages, costs, expenses or losses arising out of or in connection with **YOUR** use or nonuse of the **LICENSED MATERIALS**, **YOUR** acts, any material or information provided by **YOU**, **YOUR** violation of any applicable laws or regulations or of any rights of another, and/or **YOUR** breach of any provision of this **EULA**.

**Article 11. EXPIRATION AND TERMINATION**

(a) The rights granted to **YOU** hereunder to use the **PRODUCT** are conditioned upon **YOUR** continued possession of, and **YOUR** continued right under a license from **LFOW**, to use, the electronically transferred content and/or physical CD/DVD that **YOU** purchased. In the event that **YOU** no longer possess or have the right under such license to use the electronically transferred content and/or physical CD/DVD, **YOUR** rights hereunder to use the **PRODUCT** shall expire immediately, without notice from **LFOW**.

(b) Without prejudice to any other rights **LFOW**, or any **LFOW**, PARTY may have hereunder, the term of this **EULA** shall terminate immediately, without notice from **LFOW**, and all rights **YOU** may have hereunder to use the **LICENSED MATERIALS** shall be immediately revoked, in the event that **YOU**: (I) fail to comply with any provision of this **EULA**, (II) fail to make any payment due to **LFOW**, (III) fail to install an update of the electronically transferred content and/or physical CD/DVD that was previously provided to **YOU** by **LFOW** within the time specified, or (IV) file a voluntary petition or are subject to an involuntary petition under applicable bankruptcy laws, are declared insolvent, make an assignment for the benefit of creditors, or are served with a writ of attachment, writ of execution, garnishment or other legal process pertaining to any of **YOUR** assets or property.

(c) Upon the expiration or termination of this **EULA**, **YOU** shall immediately remove all of the **LICENSED MATERIALS** from computer (**WEB SERVER**) system and delete or destroy them, along with any related documentation (and any copies thereof) that **YOU** may have received or otherwise may possess.

(d) Articles 7 (Intellectual Property Rights), 8 (Exclusion of Warranties), 9 (Limitation of Liability), 10 (Damages Arising Out Of **YOUR** Actions), 11 (Expiration and Termination), 12 (Governing Law and Waiver of Trial By Jury), and 13 (General) shall survive and remain in full force and effect following the expiration or termination of this **EULA**.

(e) To the extent relevant under applicable law, **YOU** and **LFOW** each agree, for the effectiveness of the termination clauses under this **EULA**, to waive any provisions, procedures and operation of any applicable law that might otherwise require judicial approval or a court order in order to effect the termination of this **EULA**.

**Article 12. GOVERNING LAW AND WAIVER OF TRIAL BY JURY**

(a) THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS **EULA** SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(b) **YOU** HEREBY WAIVE ALL RIGHTS AND/OR ENTITLEMENT TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY TO THIS **EULA** OR THE **PRODUCT**.

(c) **YOU** HEREBY AGREE ON BEHALF OF YOURSELF AND ANY PERSON CLAIMING BY OR THROUGH **YOU** THAT THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE FOR ANY LITIGATION ARISING FROM OR RELATING TO THIS **EULA** OR THE SUBJECT MATTER HEREOF SHALL BE AN APPROPRIATE FEDERAL OR STATE COURT LOCATED IN THE COMMONWEALTH OF PENNSYLVANIA.

**Article 13. GENERAL**

If any provision of this **EULA** is subsequently held to be invalid or unenforceable by any court or other authority, such invalidity or unenforceability shall in no way affect the validity or enforceability of any other provision of this **EULA**. This **EULA** shall be binding upon the parties' authorized successors and assignees. Neither party's waiver of any breach or failure to enforce any of the provision of this **EULA** at any time shall in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every other provision. No modification of this **EULA** shall be effective unless it is set forth in a writing signed or authorized by **LFOW**.

The headings of the sections of this **EULA** are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this **EULA**.

No action, regardless of form, arising out of or relating to this **EULA** or the subject matter hereof may be brought by Licensee more than three (3) months after the cause of action has initially arisen.

## EXHIBIT “D”



**Janine Feeney**

---

**From:** Janine Feeney  
**Sent:** Monday, February 11, 2013 4:20 PM  
**To:** 'Chad Banh'  
**Cc:** 'brett.evans@us.usana.com'  
**Subject:** Order Has Been Completed  
**Attachments:** USANA\_1.zip

Dear Customer,

Thank you for choosing LiveFaceOnWeb.com for your exciting and innovating marketing tool. We have completed your order and have attached one file in WinZip format. If you are unable to open .zip files, please go to <http://www.winzip.com> and download the free trial software. Upon you having the ability to open .zip files please follow the step below:

- 1) Uncompress the .zip file into any folder on your computer
- 2) In your folder where you have uncompressed the .zip file you should have 4 files located
  - a. lfow.swf – Macromedia Flash Player File
  - b. USANA\_1\_lf.flv – Macromedia Video File
  - c. playLFW.js – JavaScript File
  - d. EULA.pdf – End User License Agreement
- 3) Select the playLFW.js If you are using Windows right click on the file. A drop down menu will appear. Select "Edit" option.
- 4) Once you open the playLFW.js file on the 16th line from the top you will have to put your web site address in. There is an example shown on the line above. Within playLFW.js file you are able to modify additional options.
- 5) After modifying the file save it.
- 6) Upload the "SWF", "FLV", and "JS" files into your web server or where your web site is located. Make sure you put the files in a root area of your web site.
- 7) The last step of the process, locate the file on your web server where you would like your visual representative to appear. Edit the file and before closing the BODY tag put the following lines in:

`<script src="playLFW.js" type="text/javascript"></script>`

Example:

```
<html>
<body>
....
....
....
<script src="playLFW.js" type="text/javascript"></script>
</body>
</html>
```

Remember, you are only allowed to install one copy of the product for one URL. Additional licenses can be purchased.

Again, we would like to thank you for your order. If you have any questions or may be in need of assistance, please don't hesitate to contact us at 1-800-353-1990

Thank You,  
Janine Feeney

[www.livefaceonweb.com](http://www.livefaceonweb.com)

1300 Industrial Blvd. Suite 212

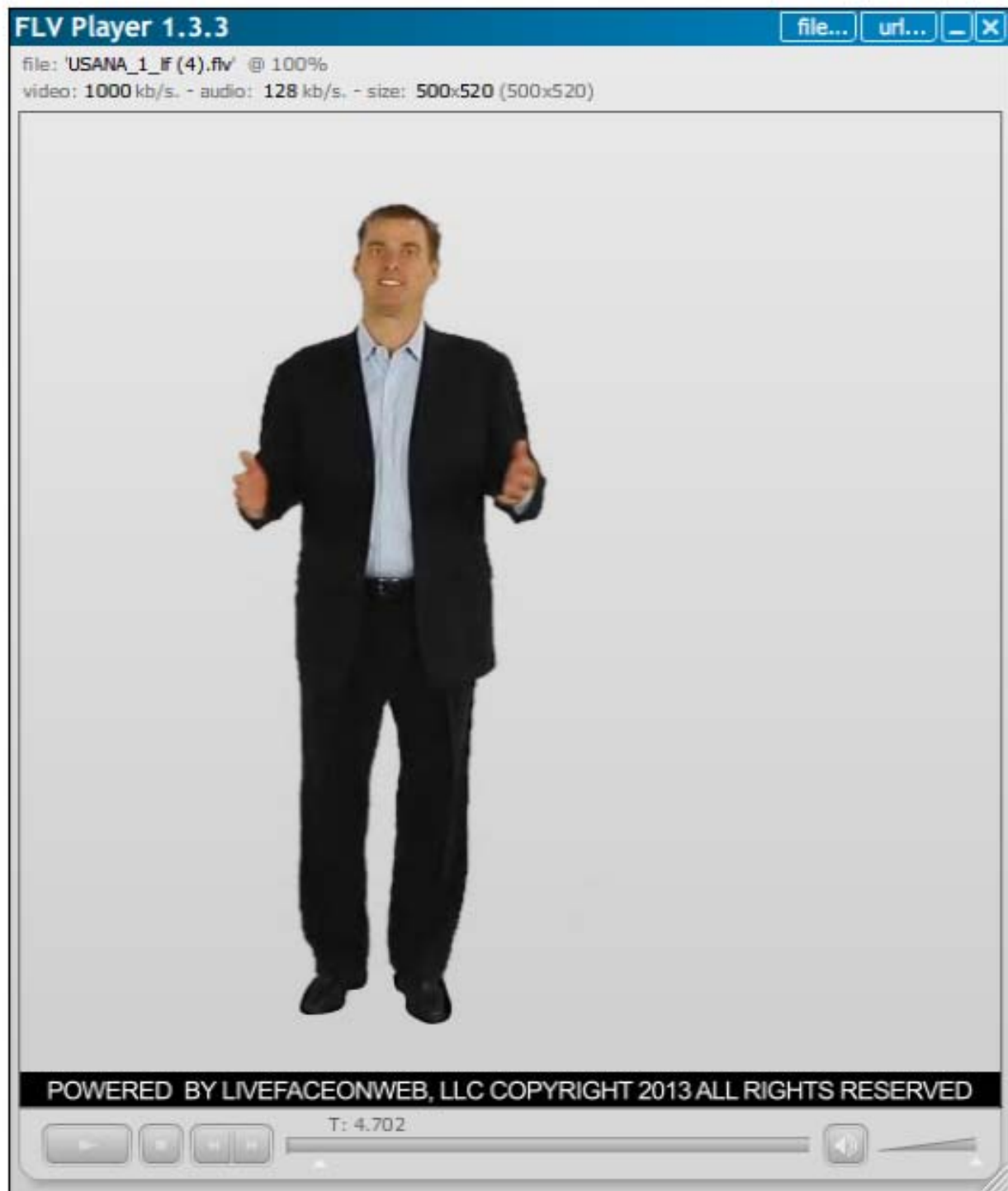
Southampton, PA 18966

Toll Free: +1(800)353-1990 Ext. 129

Phone: +1(215)355-3501 Ext. 129

Fax: +1(215)396-2870

## EXHIBIT “E”



## EXHIBIT “F”

# TINOVSKY LAW FIRM

A PROFESSIONAL CORPORATION

FIVE NESHAMINY INTERPLEX  
SUITE 205  
ROUTE 1 & OLD LINCOLN HWY  
TREVOSSE, PA 19053  
  
215.568.6860  
215.701.4987 FAX  
WWW.TINOVSKY.COM

VLAD TINOVSKY, ESQUIRE  
215.568.6862 Direct Dial  
vtinovsky@tinovsky.com

August 16, 2013

**Via First Class Mail, Registered Mail (RRR) and Email**

USANA Health Sciences, Inc.  
3838 West Parkway Boulevard  
Salt Lake City, UT 84120  
Attn: President, CEO and General Counsel

**RE: Notice of Intellectual Property Rights Infringement and Breach of Contract  
and Offer to Compromise Claims**

Ladies and/or Gentlemen:

We represent Live Face on Web, LLC ("LFOW") in intellectual property and various other legal matters.

LFOW is a leading developer of software and video technology for websites, and is the owner of proprietary video streaming software ("LFOW Software") and related presentations (each being a "LFOW Software Package") that it licenses to businesses and individuals subject to the terms and conditions of an End User License Agreement ("EULA"). As a condition to the purchase of a LFOW Software Package license, each customer must agree to be bound by the terms and conditions of the EULA, which is transmitted to the customer electronically and the form of which is available for reference at <http://www.livefaceonweb.com/EULA.htm> ("LFOW Website"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the EULA.

The LFOW Website promotes LFOW products and services, which have been licensed by small- and medium-sized businesses as well as large, Fortune 500 companies. This fact serves as a testament to the superiority of the LFOW Software and Packages in the marketplace. LFOW has spent considerable time, effort and money to develop and market its products and services, and protects such products and services through, *inter alia*, copyright, trademark and other intellectual property laws. LFOW holds certain registered copyrights and trademarks in respect to the LFOW Software, and vehemently protect such rights from unlawful infringement.

In February 2013, USANA Health Sciences, Inc. ("USANA") purchased from LFOW one (1) license to use a LFOW Software Package, which displays a marketing and sales presentation from USANA's CEO, David Wentz, via LFOW's proprietary video player which did not contain LFOW's registered trademark (i.e. "unbranded" video player) at the request of and for an

additional fee paid by USANA (the “USANA Product”), on **one (1) Web Server, Web Site and Web Page** in accordance with the applicable EULA. The license fee paid by USANA totaled \$1,050.00, of which \$900.00 related to the presentation and \$150.00 related to the “unbranded” video player. While USANA provided LFW with a “raw” video file for use in the USANA Product, LFW modified and integrated such “raw” video file into its proprietary LFW Software in order to create the USANA Product that was licensed to USANA as a whole and under the terms and conditions of the EULA. Enclosed herewith for your reference is the LFW Invoice for the USANA Product dated February 21, 2013 and certain emails evidencing, *inter alia*, the delivery and acceptance of the USANA Product subject to the EULA and USANA’s request to remove LFW’s trademarked logo for an additional fee.

USANA was fully aware that use of the USANA Product on any additional Web Servers, Web Sites, URLs or Web Pages would require the purchase of additional licenses from LFW at its then current pricing. USANA was also fully aware that it could not change, alter, amend, modify or create derivative works, enhancements, extensions or add-ons to the USANA Product, as USANA specifically requested that LFW license the USANA Product with the “unbranded” version of LFW’s video player for an additional fee. However, at all times it was contemplated that LFW’s copyright notice would be prominently displayed on the bottom of the USANA Product. These terms and conditions of the license were clearly understood and contemplated by the parties and set forth in the EULA.

However, despite USANA’s understanding of the parties’ agreement and the restrictions of the EULA, LFW has recently discovered that USANA has clandestinely and unlawfully: (a) altered the USANA Product by removing LFW’s copyright notice in violation of the EULA and applicable copyright law (“Altered Product”); (b) created at least eight (8) derivative works of the USANA Product (“Derivative Products”; and together with the Altered Product, collectively, “Infringing Products”) without authorization or privilege as more fully described below; (c) improperly using the USANA Product on at least five (5) unlicensed Web Pages<sup>1</sup>, and the Infringing Products on at least fifty-five (55) unlicensed Web Pages, for which USANA has not been granted authorization or paid a license fee to LFW as set forth on Exhibit A hereto (collectively, the “Unauthorized USANA Web Pages”).

There is irrefutable evidence that USANA’s infringement was willful. For instance, in order to remove LFW’s copyright notice, USANA would have had to, *inter alia*, decompile, alter and recompile the proprietary video player source code incorporated into the USANA Product. In order to create the Infringing Products, and in addition to the steps required to unlawfully removing LFW’s copyright notice, USANA would have had to, *inter alia*, decompile the USANA Product, modify LFW’s proprietary Javascript source code in order to reference USANA’s infringing works, reduce the sound in the original English audio file incorporated into the USANA Product and overlay and integrate various unauthorized foreign language voice files,

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<sup>1</sup> In August 2013, pursuant to Article 1 of the EULA, LFW billed USANA’s credit card in the aggregate amount of \$5,250.00 for the recently discovery use of the USANA Product on the five (5) unlicensed Web Pages (“Additional Web Page Charges”).

and recompile the components to create the Infringing Products. Certain of USANA's infringing computer files were even named to include LFOW's proprietary "\_LF" naming convention in order to "trick" the LFOW Software into recognizing and playing the infringing files as though they were part of the original licensed work. The Infringing Products were then used throughout the world by USANA in a clear attempt to increase its sales and profits, all at the expense of LFOW's contractual and intellectual property rights.

Further, due to the manner in which the Internet functions, whenever a user visits an Unauthorized USANA Web Page, the Unauthorized USANA Web Page automatically stores, copies and executes the USANA Product and/or Infringing Product on such Unauthorized USANA Web Page. At the same time, a copy of the USANA Product and/or Infringing Product is automatically copied onto the user's computer. Of course, this entire process is invisible to the user, who merely sees a character appear at the bottom of his or her computer screen and then watches, mesmerized, as that character appears to "speak" and "move" around on the page. However, such actions created by the unlawful conduct of USANA and its accomplices create potential indirect infringement claims against such users.

The unlawful alteration, creation, reproduction and use of the USANA Product and Infringing Products on the Unauthorized USANA Web Pages constitutes a breach of the EULA and intentional infringement of LFOW's intellectual property rights, including, without limitation, LFOW's registered copyrights and trademarks. Given the course of business dealings between the parties (including USANA's software developers and/or other employers and agents who are knowledgeable about intellectual property rights), a reasonable person could only conclude that USANA's actions were intentional and fraudulent. As the owner of registered copyright and trademark material in the USANA Product and LFOW Software, LFOW has an interest in protecting its rights against such intentional intellectual property infringement. Moreover, USANA's unauthorized copying, alteration, creation of derivative works and use of the USANA Product and/or Infringing Products may also constitute unfair competition under both state and federal law.

The aforementioned unlawful acts are extremely serious. LFOW is a leading provider of "live person" video services and has developed specialized and proprietary processes that give it a distinct advantage in the marketplace. By reason of LFOW's position as a leader in its industry, LFOW provides services to highly visible enterprise-level customers that pay significant compensation to LFOW for such services. By infringing LFOW's copyrighted and trademarked software, USANA has caused LFOW to sustain substantial economic damages that it stands ready to establish, as and when necessary. In addition, USANA's actions have undermined LFOW's credibility in a very competitive marketplace. While at this time it is impossible to determine the full extent of USANA's unlawful conduct and the harm it has caused, LFOW has every intention to do so in order to protect its intellectual property and other rights.



USANA Health Sciences, Inc.

August 16, 2013

Page 4

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LFOW is confident that it will prevail in any litigation commenced as a result of the above-referenced unlawful conduct. However, LFOW also recognizes that an expeditious and amicable business resolution would serve the interests of both parties. Consequently, LFOW hereby demands that, **within seven (7) days of the date of this letter**, USANA must agree in writing to:

1. Acknowledge and reaffirm the Additional Web Page Charges owed to LFOW; and

2. Pay LFOW the aggregate sum of \$75,000.00 ("Pre-Litigation Settlement and License Amount") in order to avoid litigation over the above-referenced intentional infringement of LFOW's rights by USANA and to obtain a license to use the Infringing Products, without LFOW's copyright notice prominently displayed thereon, on the Unauthorized USANA Web Pages, all pursuant to the terms and conditions of the EULA and a written Confidential Settlement and License Agreement acceptable in form and substance to LFOW in its sole discretion; and

3. Immediately and permanently cease and desist from all future unauthorized alteration, creation, reproduction, use and distribution of the USANA Product and the Infringing Products, or otherwise violate the rights of LFOW in the future.

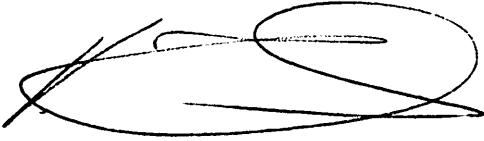
The Pre-Litigation Settlement and License Amount represents a significant discount to the amount of damages and other sums awardable to LFOW in litigation against USANA. By way of example and not limitation, it is reasonable to assume that a Court would award at least, *inter alia*: (a) \$57,750.00 in aggregate license fees (i.e., \$1,050.00 for each unauthorized Web Page) for the creation and use of the Infringing Products on fifty-five (55) Unauthorized USANA Web Pages, which is in addition to the Additional Web Page Charges billed to USANA; (b) \$22,500.00 in aggregate fines (i.e., \$2,500.00 for each violation) for the fraudulent removal of LFOW's copyright notices when creating the nine (9) Infringing Products under Section 506(d) of the Copyright Act, 17 U.S.C. § 506(d); (c) tens (if not hundreds) of thousands of dollars in costs and/or attorney's fees related to enforcement of LFOW's rights under the EULA and applicable law, including, without limitation, Section 505 of the Copyright Act, 17 U.S.C. § 505; and/or (d) lost profits and other damages or remedies available under applicable law.

If USANA does not provide the written confirmation as set forth above, then it must immediately cease and desist from its unlawful conduct and LFOW will proceed to enforce its legal rights to the maximum extent permitted by law.

Please note that the offer to compromise LFOW's claims against USANA referenced herein can only be accepted upon the execution by the parties of a Confidential Settlement and License Agreement, acceptable in form and substance to LFOW in its sole discretion, and that such offer to compromise is subject to Federal Rule of Evidence 408 and its state counterparts.

Notwithstanding the foregoing, LFOW hereby reserves all its rights and remedies, none of which are hereby waived. I look forward to your prompt attention to this serious legal matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Vlad Tinovsky", written over a horizontal line.

Vlad Tinovsky

Enclosures

cc: Live Face On Web, LLC

**EXHIBIT "A"**  
**UNAUTHORIZED USANA WEB PAGES**  
**(Non-Exhaustive List – Investigation Ongoing)**

INFRINGING FILE NAME #1: USANA\_ESM\_050813\_LF.FLV  
INFRINGING URL:  
1) shop.usanatest.com/shop/  
2) shop.usana.com/shop/  
3) shop.usanabeta.com/shop/  
4) shop.usanalogical.com/shop/  
5) shop.usanaprjc.com/shop/  
6) localhost/shop/  
7) 10.16.32.93/shop/

INFRINGING FILE NAME #2: USANA\_ENU\_050813\_LF.FLV  
INFRINGING URL:  
1) shop.usanatest.com/shop/  
2) shop.usana.com/shop/  
3) shop.usanabeta.com/shop/  
4) shop.usanalogical.com/shop/  
5) shop.usanaprjc.com/shop/  
6) localhost/shop/  
7) 10.16.32.93/shop/

INFRINGING FILE NAME #3: USANA\_THA\_050813\_LF.FLV  
INFRINGING URL:  
1) shop.usanatest.com/shop/  
2) shop.usana.com/shop/  
3) shop.usanabeta.com/shop/  
4) shop.usanalogical.com/shop/  
5) shop.usanaprjc.com/shop/  
6) localhost/shop/  
7) 10.16.32.93/shop/

INFRINGING FILE NAME #4: USANA\_ZHT\_050813\_LF.FLV  
INFRINGING URL:  
1) shop.usanatest.com/shop/  
2) shop.usana.com/shop/  
3) shop.usanabeta.com/shop/  
4) shop.usanalogical.com/shop/  
5) shop.usanaprjc.com/shop/  
6) localhost/shop/  
7) 10.16.32.93/shop/

INFRINGING FILE NAME #5: USANA\_FRC\_050813\_LF.FLV  
INFRINGING URL:  
1) shop.usanatest.com/shop/  
2) shop.usana.com/shop/  
3) shop.usanabeta.com/shop/

- 4) shop.usanalogical.com/shop/
- 5) shop.usanaprjc.com/shop/
- 6) localhost/shop/
- 7) 10.16.32.93/shop/

INFRINGING FILE NAME #6: USANA\_JPN\_050813\_LF.FLV  
INFRINGING URL:

- 1) shop.usanatest.com/shop/
- 2) shop.usana.com/shop/
- 3) shop.usanabeta.com/shop/
- 4) shop.usanalogical.com/shop/
- 5) shop.usanaprjc.com/shop/
- 6) localhost/shop/
- 7) 10.16.32.93/shop/

INFRINGING FILE NAME #7: USANA\_KOR\_050813\_LF.FLV  
INFRINGING URL:

- 1) shop.usanatest.com/shop/
- 2) shop.usana.com/shop/
- 3) shop.usanabeta.com/shop/
- 4) shop.usanalogical.com/shop/
- 5) shop.usanaprjc.com/shop/
- 6) localhost/shop/
- 7) 10.16.32.93/shop/

INFRINGING FILE NAME #8: USANA\_2\_LF.FLV  
INFRINGING URL:

- 1) shop.usanatest.com/shop/
- 2) shop.usanabeta.com/shop/
- 3) shop.usanalogical.com/shop/
- 4) shop.usanaprjc.com/shop/
- 5) localhost/shop/
- 6) 10.16.32.93/shop/

ORIGINAL PRODUCT: USANA\_1\_LF.FLV  
INFRINGING URL:

- 1) shop.usanabeta.com/shop/
- 2) shop.usanalogical.com/shop/
- 3) shop.usanatest.com/shop/
- 4) shop.usanaprjc.com/shop/
- 5) 10.16.32.93/shop/



**LiveFaceOnWeb.com**  
1300 Industrial Blvd. Suite 212  
Southampton, PA 18966  
Tel. 1.800.353.1990

# Invoice

Date	Invoice#
02/21/2013	200004221

**Bill To:**

Attn: Richard E Wilson  
USANA Health Sciences  
3838 W Parkway Blvd  
Salt Lake City, UT 84120  
Phone: +1-801-954-7100  
Email: Rick.wilson@us.usana.com

		P.O. No.	Terms	Project
				USANA
Quantity	Description	Rate		Amount
1	Video conversion of client provided footage.	\$900.00		\$900.00
1	Unbranded video player version.	\$150.00		\$150.00

**Janine Feeney**

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**From:** Janine Feeney  
**Sent:** Monday, February 11, 2013 4:20 PM  
**To:** 'Chad Banh'  
**Cc:** 'brett.evans@us.usana.com'  
**Subject:** Order Has Been Completed  
**Attachments:** USANA\_1.zip

Dear Customer,

Thank you for choosing LiveFaceOnWeb.com for your exciting and innovating marketing tool. We have completed your order and have attached one file in WinZip format. If you are unable to open .zip files, please go to <http://www.winzip.com> and download the free trial software. Upon you having the ability to open .zip files please follow the step below:

- 1) Uncompress the .zip file into any folder on your computer
- 2) In your folder where you have uncompressed the .zip file you should have 4 files located
  - a. lfow.swf – Macromedia Flash Player File
  - b. USANA\_1\_lf.flv – Macromedia Video File
  - c. playLFW.js – JavaScript File
  - d. EULA.pdf – End User License Agreement
- 3) Select the playLFW.js If you are using Windows right click on the file. A drop down menu will appear. Select "Edit" option.
- 4) Once you open the playLFW.js file on the 16th line from the top you will have to put your web site address in. There is an example shown on the line above. Within playLFW.js file you are able to modify additional options.
- 5) After modifying the file save it.
- 6) Upload the "SWF", "FLV", and "JS" files into your web server or where your web site is located. Make sure you put the files in a root area of your web site.
- 7) The last step of the process, locate the file on your web server where you would like your visual representative to appear. Edit the file and before closing the BODY tag put the following lines in:

`<script src="playLFW.js" type="text/javascript"></script>`

Example:

```
<html>
<body>
....
....
....
<script src="playLFW.js" type="text/javascript"></script>
</body>
</html>
```

Remember, you are only allowed to install one copy of the product for one URL. Additional licenses can be purchased.

Again, we would like to thank you for your order. If you have any questions or may be in need of assistance, please don't hesitate to contact us at 1-800-353-1990

Thank You,  
Janine Feeney

[www.livefaceonweb.com](http://www.livefaceonweb.com)

1300 Industrial Blvd. Suite 212

Southampton, PA 18966

Toll Free: +1(800)353-1990 Ext. 129

Phone: +1(215)355-3501 Ext. 129

Fax: +1(215)396-2870

**Janine Feeney**

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**From:** Chad Banh <Chad.Banh@us.usana.com>  
**Sent:** Friday, February 15, 2013 7:24 PM  
**To:** Janine Feeney  
**Subject:** RE: Order Has Been Completed

Hi Janine,

You probably already left. If so, we can take care of this on Monday. I got the approval from my manager to go ahead and charge the \$150 fee to have the logo removed so please do so. Have a great weekend. Talk to you on Monday.

Chad

---

**From:** Janine Feeney [Janine@livefaceonweb.com]  
**Sent:** Friday, February 15, 2013 5:14 PM  
**To:** Chad Banh  
**Subject:** RE: Order Has Been Completed

Chad I am leaving for the weekend, but will follow up on Monday.

Thank You,  
Janine Feeney

Production Director  
[www.livefaceonweb.com](http://www.livefaceonweb.com)  
1300 Industrial Blvd. Suite 212  
Southampton, PA 18966  
Toll Free: +1(800)353-1990 Ext. 129  
Phone: +1(215)355-3501 Ext. 129  
Fax: +1(215)396-2870  
Like us on [Facebook!](#)

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**From:** Chad Banh [mailto:Chad.Banh@us.usana.com]  
**Sent:** Friday, February 15, 2013 7:00 PM  
**To:** Janine Feeney  
**Subject:** RE: Order Has Been Completed

Hi Janine,

Is there any way to remove the LF button next to the play/pause button on the video? What will it take to get that removed? Thanks!

Chad

---

**From:** Janine Feeney [Janine@livefaceonweb.com]  
**Sent:** Friday, February 15, 2013 12:04 PM  
**To:** Chad Banh  
**Subject:** RE: Order Has Been Completed

Great! Let me know when it's live, I'd love to see it on the website.



## EXHIBIT “G”



Vlad Tinovsky <vtinovsky@tinovsky.com>

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## LFOW v. USANA Health Sciences, Inc. Notice of IP Infringement

1 message

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**Kevin McMurray** <Kevin.McMurray@us.usana.com>  
To: "vtinovsky@tinovsky.com" <vtinovsky@tinovsky.com>

Wed, Aug 28, 2013 at 7:48 PM

### **WITHOUT PREJUDICE**

Hello, Vlad. Thanks again for giving me some extra time to investigate this matter. I've discussed the issues with our IT team in charge of the project that utilized your client's LFOW program, and I'm certain I have a good explanation for what has happened.

I'll provide some comments below for your consideration, but I definitely want to follow up with you by phone to further vet these issues and get to a reasonable resolution.

I completely understand your client's concerns, and I can see where a lot of this might look really "bad" to a non-technical person, but after talking to my IT team and carefully investigating the issues, I'm not at all convinced any of the evidence shows an intention to willfully infringe your client's IP rights, whatever those rights may be. Consider the following:

1. We're not sure what your client claims to be proprietary relating to their "video player"? The entire program consists of Javascript file with transparent layered video technology. This same or similar technology is freely available online in the form of several similar players offered by various vendors; and there are numerous free tutorials available online that demonstrate how to create this same type of video programming from scratch. (Many of these tutorials are from Adobe.) In short, it's difficult to understand what it is exactly that your client claims to be proprietary in the first place. I'm not trying to debate your client's proprietary rights in their player, assuming such rights exist, but based on what I know about the technologies at issue, it seems the claim of IP infringement might be a bit aggressive. As you can read from my comments below, this may very well be a case of overreaching with respect to the terms and conditions of a license agreement, but I'm not sure anyone would consider this a serious violation of IP rights in a particular technology. Regardless, I can assure you there is insufficient proof to show there was any willful or intentional act on USANA's part to infringe any IP.

2. Your client's video program can't be reversed engineered or decompiled, because there isn't anything to "reverse engineer" or "decompile" in the first place. All parameters that control the video player are written in plain text in human readable file format, which is never compiled to begin with.

3. USANA actually created the video production used in your client's video player. USANA licensed your client's program for the sole purpose of running the USANA production through your client's video player. USANA did all the production work, using USANA's production studio and USANA's talent. Basically, USANA produced the video and simply plugged a finished video product into your client's system.

4. Your client's claim that USANA understood or contemplated that LFOW's copyright notice would be prominently displayed on the bottom of the USANA video is not a fair assumption. As you noted, USANA purchased an "unbranded" version of the video player for an additional fee. Our IT department understood this to mean there would be NO LFOW branding on the final video product, and in their mind that meant no copyright notice or trademark attribution of any kind (and this makes more sense when you consider the fact that USANA created the entire video, so why would they use a LFOW copyright notice?).

Yes, it's true that USANA's IT programmer working on this project was asked by USANA's production team to plug into the LFOW player several different (I believe 9 total) videos that had been translated into various foreign languages, but the programmer unfortunately was not aware of any requirement to use the LFOW copyright notice, nor did he or anyone else at USANA intentionally, clandestinely or maliciously remove any such notice. Basically, what happened was one of USANA's programmers simply did a search of the Javascript file to see where the video file would be included, and he "wrote in" the new video files for each of the foreign-language versions of the final USANA-created video product. Again, there was no "de-compiling" or "reverse engineering" involved, but rather a simple revision to human readable script under circumstances where it was not clear to the programmer or anyone else that it was not OK to write-in script.

5. Although your client claims USANA violated the terms of the End User License Agreement (EULA) by posting the video on multiple web servers, web sites and web pages, this simply is not true. The Exhibit A you attached to your letter lists several different URLs/IP addresses. It's important to note that most of the URLs either don't actually exist or they are not servers on the Internet. No. 2 on your list is USANA\_ENU\_050813\_LF.FLV. This is USANA's single production server that hosts the videos in question and where customers go to complete the online enrollment process. This site clearly complies with the EULA. The other URLs/IP addresses are either test sites used internally for testing purposes only, pre-production sites where the videos temporarily reside for marketing review, or developers' desktops. In each case, the URLs/IP addresses reside behind a firewall, not visible to the general public; and in the case of the developers' desktop URLs/IPs, these do not actually exist in real time, but rather they are the product of a virtual hosts file that resides on a developer's computer and used to "trick" the desktop into thinking it is a different machine while software development is being done. These are not even servers or websites as defined by LFOW's EULA. As another example, consider the "localhost/shop/ URL. There is no such location on the Internet and there is no such server in the world. "Localhost" is an internal loopback feed that exists on all computers but is inaccessible outside of those computers. If you copy and paste this URL into a browser, you'll see URL doesn't exist.

Please also note that after meeting with USANA's IT team, they decided to stop using the video production in connection with the online distributor enrollment process. I realize that doesn't change what has already happened, but it does show an intent on USANA's part to resolve this matter before considering using your client's video player for future marketing purposes.

I sincerely believe this is a simple matter that we can resolve quickly, amicably and reasonably. I'd like to discuss this with you as soon as possible to offer what I believe is a good solution.

Please let me know when you have time to talk. I'm out of the office on Friday this week and Monday of next week, but otherwise, I'll do whatever I can to keep my schedule as open as possible.

Kind regards,  
Kevin

Kevin S. McMurray

*Deputy General Counsel, International*

801-954-7816 Desk

801-954-7809 Fax

801-971-3129 Mobile

USANA Health Sciences, Inc.

3838 West Parkway Boulevard

Salt Lake City, Utah 84120-6336

**From:** "Vlad Tinovsky" <[vtinovsky@tinovsky.com](mailto:vtinovsky@tinovsky.com)>  
**To:** "Jim Bramble" <[James.Bramble@us.usana.com](mailto:James.Bramble@us.usana.com)>  
**Subject: Notice of IP Infringement**

Dear Counsel,

This firm represents Live Face On Web, LLC.

Please see the attached letter regarding USANA's intellectual property rights infringement and breach of end user license agreement.

I look forward to hearing from you regarding this urgent matter.

Regards,

Vlad Tinovsky, Esq.  
Tinovsky Law Firm, P.C.  
P: [215.568.6862](tel:215.568.6862)  
F: [215.701.4987](tel:215.701.4987)

E: [vinovsky@tinovsky.com](mailto:vinovsky@tinovsky.com)<<mailto:vinovsky@tinovsky.com>>

Trevose Office:  
Five Neshaminy Interplex  
Suite 205  
Trevose, PA 19053

Philadelphia Office:  
Two Liberty Place  
22nd Floor  
Philadelphia, PA 19102

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## EXHIBIT “H”



## CREDIT CARD AUTHORIZATION FORM

CREDIT CARDHOLDER INFORMATION					
NAME ON CREDIT CARD	RICHARD E WILSON				
TYPE OF CREDIT CARD	VISA	(MC)	AMEX	DISCOVER	OTHER
TYPE OF ACCOUNT	PERSONAL		(BUSINESS)		
COMPANY NAME	USANA Health Sciences				
AUTHORIZED AMOUNT	\$900.00				
ACCOUNT NUMBER	[REDACTED]				
EXPIRATION DATE	[REDACTED]				
BILLING ADDRESS	3838 W Parkway Blvd				
CCV NUMBER	[REDACTED]				
CITY	Salt Lake City	STATE	UT	ZIP CODE	84120
PHONE	801-954-7100	EMAIL	rick.wilson@us.usana.com		FAX NUMBER

AUTHORIZATION OF CARD USE
<p>I certify that I am the authorized holder and signer of the credit card referenced above. I certify that all information above is complete and accurate. I hereby authorize LiveFaceOnWeb, LLC. to collect payment for all charges as indicated above. I also agree to install one copy of the product under one URL. By authorizing payment you hereby agree to the LiveFaceOnWeb EULA – End User License Agreement located at <a href="http://www.livefaceonweb.com/eula.htm">http://www.livefaceonweb.com/eula.htm</a></p>

CARDHOLDER NAME	Richard E Wilson		
SIGNATURE		DATE	2/8/13

## EXHIBIT “I”



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## RE: Update - Proposed Settlement re Life Face on Web Matter

1 message

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**Kevin McMurray** <[Kevin.McMurray@us.usana.com](mailto:Kevin.McMurray@us.usana.com)>

Thu, Sep 19, 2013 at 8:52 PM

To: Vlad Tinovsky <[vtinovsky@tinovsky.com](mailto:vtinovsky@tinovsky.com)>

Hi Vlad. Working on it. I've asked my Treasurer to contact the card company first thing tomorrow morning to request the statement.

I'm wondering if LFOW could provide us with a formal written invoice for each of the charges – similar to the invoice we received for the first license fee? My IT guy needs the invoice to submit with his corporate card statement to support the charges. (I realize the charges were “authorized” under the terms of the click-wrap agreement, but it would be ideal if he could get actual invoices for the separate charges). You can have them send the invoice to me directly, or you can have them send it to Rick Wilson at [rick.wilson@us.usana.com](mailto:rick.wilson@us.usana.com).

Thank you.

Best,

Kevin

**From:** Vlad Tinovsky [mailto:[vtinovsky@tinovsky.com](mailto:vtinovsky@tinovsky.com)]

**Sent:** Thursday, September 19, 2013 4:01 PM

**To:** Kevin McMurray

**Subject:** Re: Update - Proposed Settlement re Life Face on Web Matter

Hi Kevin,

Thank you for your email. My client is having a big problem with the merchant services company, and requested that USANA provide written confirmation from its credit card company that USANA is dropping the dispute and accepting responsibility for the \$8400 in additional URL license fees validly charged to the credit card. It is imperative that we received this written confirmation from the bank as soon as possible but no later than tomorrow, as we are concerned that LFOW will be dropped by its merchant account company. Thank you for your anticipated cooperation.

Regards,